

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 11, 2004

In Reply Refer To:

CMS Gas Transmission Company
and Bluewater Gas Storage, L.L.C.
Docket No. CP04-105-000
Presidential Permit

The Honorable Colin L. Powell
Secretary of State
Washington, D.C. 20520

Dear Mr. Secretary:

1. Pursuant to the provisions of Executive Order Nos. 10485 and 12038 of September 1, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00, effective December 12, 2001, enclosed for your information and consideration is a copy of an application filed jointly by CMS Gas Transmission (CMS) and Bluewater Gas Storage (Bluewater) with the Federal Energy Regulatory Commission on April 8, 2004, in Docket No. CP04-105-000. In that application, CMS and Bluewater request that the Commission issue a Presidential Permit and authority under section 3 of the Natural Gas Act (NGA) to Bluewater, who will acquire CMS' leasehold interest in the facilities described below. The Commission issued the Presidential Permit and NGA section 3 authorization to CMS in Docket Nos. CP95-331-000 and CP95-332-000 on August 2, 1995, CMS Gas Transmission and Storage Company, 72 FERC ¶ 61,146 (1995), which authorized CMS to operate, maintain, and connect certain natural gas facilities at the United States/Canada international boundary in St. Clair County, Michigan (the "Border Facilities").

2. CMS is a Michigan corporation and is wholly-owned subsidiary of CMS Enterprises Company. CMS Enterprises Company is a wholly owned subsidiary of CMS Energy Corporation. CMS is an intrastate natural gas pipeline company subject to the jurisdiction of the Michigan Public Service Commission (Michigan Commission). CMS owns a leasehold interest in and operates, under section 3 of the NGA and its Presidential Permit, the subject Border Facilities in St. Clair County, Michigan. CMS also owns interests in natural gas gathering pipelines and treatment facilities in northern Michigan and has interests in gas transmission pipelines in South America and Australia and in electric generation and distribution facilities in South America and India. CMS is not

owned wholly or in part by any foreign government, nor is it subsidized, directly or indirectly, by any foreign government.

3. Bluewater is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Stamford, Connecticut. Bluewater's sole member is Sempra Energy Trading Corp., a Delaware corporation actively engaged in the business of marketing and trading natural gas to customers located in Michigan and throughout the United States. Bluewater is authorized to conduct business in Michigan pursuant to filings with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services.

4. Bluewater seeks to acquire the leasehold interest in the Border Facilities from CMS, as well as CMS' Presidential Permit and NGA section 3 authorization, in connection with the development by Bluewater of a natural gas storage facility in St. Clair County, Michigan. In furtherance of this project, Bluewater acquired a 25-mile long pipeline (Bluewater Pipeline) in Macomb and St. Clair Counties, Michigan, and obtained authority from the Michigan Commission to construct and operate new pipeline facilities that would interconnect the Bluewater Pipeline to the Bluewater storage facility and to Great Lakes Gas Transmission, L.P.'s system. Additionally, Bluewater sought authority from the Michigan Commission to construct interconnections with Vector Pipeline L.P. and Michigan Consolidated Gas Company.

5. Except to the extent that the Commission will continue to regulate the Border Facilities under section 3 of the NGA, once they are transferred to Bluewater by CMS, Bluewater and its other facilities and operations will qualify for exemption from the Commission's jurisdiction under section 1(c) of the NGA (the Hinshaw exemption). The transfer to Bluewater of CMS' leasehold interest in the Border Facilities will not involve any change to the physical facilities covered by CMS's existing Presidential Permit, the underlying use of the facilities, or the services that are currently provided to customers on the facilities.

6. The Border Facilities consist of a 0.25-mile, 12-inch diameter pipeline extending from the terminus of the Bluewater Pipeline in St. Clair County, Michigan, to the United States/Canada boundary at a point in the middle of the St. Clair River. The Border Facilities interconnect with facilities on the Canadian side of the border that are operated by St. Clair Pipeline Ltd. The Border Facilities have a capacity of 250,000 Mcf/d. CMS currently operates the facilities under a 10-year lease from Novacor Hydrocarbons, Inc. (Novacor Lease), which was entered into on January 25, 1995. The Novacor Lease provides that after the initial 10-year period, the lease shall automatically extend for additional terms of one year unless either party provides two years prior notice of termination.

7. The applicants contemplate that the issuance of a Presidential Permit and section 3 authorization to Bluewater will take effect at the time that CMS and Bluewater close the transaction involving Bluewater's acquisition of CMS' leasehold interest in the Border Facilities. Once all necessary government approvals are received, Bluewater plans to begin gas transportation services over the Border Facilities on a stand-alone basis or in conjunction with its provision of gas storage services. Until that time, CMS will continue to hold the leasehold interest and retain the authorizations necessary to operate the Border Facilities.

8. Also, enclosed for your consideration is a draft copy of the amended Presidential Permit to be issued to Bluewater, which incorporates terms and conditions you and the Secretary of Defense have heretofore required in similar cases. Consistent with current Commission policy, there are two substantive differences between the draft Permit and the existing Permit. Article 3 of the draft Permit does not limit the use of the subject facilities to the importation of gas. Thus, the facilities may be used for importation or exportation as consistent with current and future authorizations by the Department of Energy. Article 9 is revised to state that the Permittee is required to defer to the Commission's finding and requirement regarding which authorized facilities should be removed and which should remain in place, in the event that they are no longer used.

9. A similar letter, together with a draft of the proposed Presidential Permit and a copy of the application, is being sent to the Secretary of Defense. If the Secretary of Defense should make an unfavorable recommendation or propose any material change in the draft of the Permit, the Commission will immediately advise you.

10. The Commission would appreciate receiving your views regarding issuance of the proposed amended Permit at an early date. Please do not hesitate to contact me at (202) 502-8400, or Amy Heyman at (202) 502-8115, if you need any further information.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

Enclosures:

Application
Draft Permit

**PERMIT AUTHORIZING BLUEWATER GAS STORAGE, L.L.C. TO
OPERATE, MAINTAIN, AND CONNECT NATURAL GAS FACILITIES AT
THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND
CANADA**

DOCKET NO. CP04-105-000

CMS Gas Transmission Company (CMS), a corporation under the laws of the State of Michigan and a wholly-owned subsidiary of CMS Enterprises, which is a wholly-owned subsidiary of CMS Energy Corporation, and Bluewater Gas Storage, L.L.C. (Bluewater), a limited liability company organized and existing under the laws of the State of Delaware, whose only member is Sempra Energy Trading Corp., a Delaware corporation, filed in Docket No. CP04-105-000 on April 8, 2004 an application, pursuant to Executive Order Nos. 10485 and 12038, issued on September 1, 1953 and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00, effective December 12, 2001, for a Permit authorizing Bluewater (Permittee), who will acquire CMS' leasehold interest in the border facilities, to operate, maintain, and connect the natural gas transmission facilities described in Article 2 below at the international boundary between the United States and Canada.

By letters dated 2004 and 2004, the Secretary of State and the Secretary of Defense, respectively, favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission (the Commission) finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00, effective December 12, 2001, and the Commission's regulations, permission is granted to Permittee to operate, maintain, and connect the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission, and may be amended by the Federal Energy Regulatory Commission, upon proper application therefor.

Article 2. The following facilities are subject to this Permit:

A natural gas transmission pipeline consisting of approximately 0.25 miles of 12-inch diameter pipeline, with a capacity of 250,000 MMcf/d, that

extends from the terminus of Permittee's Bluewater Pipeline in St. Clair County, Michigan to the international boundary between the United States and Canada at a point in the middle of the St. Clair River.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas between the United States and Canada only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation, maintenance, and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission, accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the

facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to removed any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed a the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this ____ day of _____, 2004, has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ____ day of _____, 2004, a certified copy of the record of which is attached hereto.

Bluewater Gas Storage, L.L.C.

By _____

(Attest)

Executed in triplicate.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 11, 2004

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The Honorable Donald H. Rumsfeld
Secretary of Defense
Washington, D.C. 20301

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Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas between the United States and Canada only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation, maintenance, and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

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Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission, accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the

facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to removed any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed a the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this ____ day of _____, 2004, has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ____ day of _____, 2004, a certified copy of the record of which is attached hereto.

Bluewater Gas Storage, L.L.C.

By _____

(Attest)

Executed in triplicate.